IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1052 OF 1991.

The Union of India
through its General Manager,
Central Railways, Bombay and
General Manager, South Eastern
Railways, Calcutta. : Appellant.

versus

M/s.Babulal Chunilal : Respondent.

Mr.A.N.Samant for the appellants.

Mr.G.J.Mohanrao for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent.

2. Mr.Samant, the learned counsel for the appellants, has raised only three contentions. Firstly, according to him, the claim was filed by the original claimant against two railways i.e. General Manager, Central Railway, Bombay and

General Manager, South Eastern Railway, Calcutta and the tribunal passed an award against both the railways. Therefore, according to Mr.Samant there can be liability only of one railway and not of both the railways.

3. Secondly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis.

4. Thirdly, he contended that the tribunal has awarded interest at the rate of 12% per annum. According to him, it should be 9% per annum in view of the judgment of this Court reported in **2005 (1) Mh. L.J. 165 [Maharashtra State Electricity Board vs. Union of India].** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the same judgment earlier, therefore, the rate of interest is to be reduced to 9% per annum.

5. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned or alternatively one railway should be held liable to pay and that the

interest rate should be reduced to 9% per annum.

6. Out of the three submission made by Mr.Samant, the first and third submissions are required to be accepted and the second submission is required to be rejected. If at all there is liability of the Union of India, then decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India I have accepted this contention. Therefore, the impugned judgment will have to be maintained against General Manager, Central Railway only and order against other railways has to be set aside.

7. So far as the contention of Mr.Samant regarding RR with the endorsement "Said to Contain" is concerned, the same is required to be rejected. In this case, the claimant had entrusted a consignment of 381 bags of onions, each containing 45 kgs., booked under R.R.No.437288, Invoice No.76 dated 26th May 1984 Ex-Manmad to Shalimar. The consignment reached Shalimar and was delivered on 21st June 1984 i.e. after more than 25 days. The goods were to reach destination within a normal period of nine days.

As a result the suit goods were damaged due to delay and, therefore, claim petition came to be filed. The tribunal found that there was total negligence and inordinate delay in delivery of consignment by the railways. So far as compensation is concerned, the railways had issued damaged certificate (Exhibit A2). It appears from the damage certificate that out of 381 bags 190 bags were left for delivery on assessment. It means that the remaining 191 bags were in good condition and the same were delivered under clear receipt. On percentage basis 80 bags were damaged. The claimant had adduced specific evidence to the effect that each bag was 45 kgs. in weight. He claimed Rs.40/- per bag of 45 kgs.

8. Railways can raise defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificate and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was

entrusted to the railways becomes secondary. The damage certificate shows that railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under the invoice. The tribunal has accepted that the weight of the each bag was 40 kgs. as per the evidence of the claimant. In the circumstances, the defence of said to contain is not available to the appellants.

9. So far as interest part is concerned, the contention of Mr.Samant is required to be accepted in view of the judgment of this court, as stated above.

10. Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is partly allowed.

. The liability of payment will be of the General Manager, Central Railway only and not of the other railways.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment with proportionate costs of the tribunal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE]